

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

STATE OF ILLINOIS, DEPARTMENT
OF TRANSPORTATION,

VS .

No. T10-0177

BURLINGTON NORTHERN and SANTA
FE RAILWAY COMPANY (BNSF); and
the CITY OF AURORA,

Petition to establish the interconnection of Railroad warning signal system and traffic control signal system devices at the grade crossing of Illinois Avenue and BNSF's tracks in the City of Aurora, Kane County, Illinois.

Chicago, Illinois
April 19, 2011

Met, pursuant to notice, at Chicago.

BEFORE :

TIMOTHY E. DUGGAN, Administrative Law Judge
via videoconference

APPEARANCES:

MR. LANCE JONES via videoconference
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 782-2315

for the State of Illinois, Department of
Transportation;

1 DALEY MOHAN GROBLE, by
2 MR. ROBERT J. PRENDERGAST
3 55 West Monroe Street
4 Suite 1600
5 Chicago, Illinois 60603
6 (312) 422-9999
7 for BNSF Railway Company;
8
9 ILLINOIS COMMERCE COMMISSION, by
10 MR. BRIAN VERCROYSSSE
11 527 East Capitol Avenue
12 Springfield, Illinois 62701
13 (630) 424-8750
14 for ICC Staff.
15
16
17 ALSO PRESENT:
18
19 MR. FRENCH THOMPSON, BNSF manager of public
20 projects
21
22 SULLIVAN REPORTING COMPANY, by
23 Alisa A. Sawka, CSR, RPR
24 License No. 084-004588

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- direct</u>	<u>Re- cross</u>	<u>By Examiner</u>
None.					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
None.		

1 JUDGE DUGGAN: Pursuant to the authority vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I now call Docket T10-0177 for
4 hearing.

5 May we have appearances for the
6 record, starting with the Petitioner.

7 MR. JONES: Yes, your Honor. Thank you. Lance
8 Jones, Deputy Chief Counsel Illinois Department of
9 Transportation. The address is 2300 South Dirksen
10 Parkway, Springfield, Illinois 62764. Telephone
11 number is (217) 782-2315.

12 JUDGE DUGGAN: Okay. And for BNSF.

13 MR. PRENDERGAST: Yes, Bob Prendergast,
14 P-r-e-n-d-e-r-g-a-s-t, the law firm Daly Mohan
15 Groble, address is 55 West Monroe Street, Suite 1600,
16 Chicago, Illinois 60603. My phone is (312)422-0799,
17 and I'm here on behalf of the BNSF. And Mr. French
18 Thompson, manager of public projects, is here today
19 as well.

20 JUDGE DUGGAN: Okay. Commission Staff.

21 MR. VERCRUYSSSE: Thank you, your Honor. Brian
22 Vercruysse, V-e-r-c-r-u-y-s-s-e, representing Staff

1 of the Illinois Commerce Commission. Phone number is
2 (312) 636-7760. That's it. Thank you.

3 JUDGE DUGGAN: Okay. We're here today on the
4 Department of Transportation's Petition to establish
5 an interconnect system in the City of Aurora and Kane
6 County. We had a hearing on April 7th at which time
7 Exhibits 1 through 5 were admitted into evidence by
8 agreement, I believe.

9 Since that time, the Department of
10 Transportation has filed an amended application
11 substituting the City of Aurora for Kane County.
12 That -- I issued an Administrative Law Judge ruling
13 granting leave to amend and granting the motion to
14 dismiss Kane County and substitute the City of
15 Aurora.

16 The City of Aurora obviously had no
17 prior chance to participate and this is the City of
18 Aurora's chance to participate. Nobody has appeared
19 here today on behalf of the City of Aurora.

20 I believe Staff has represented that
21 you've been in contact with them and they are in
22 agreement with the Petition. Is that correct,

1 Mr. Vercruysse?

2 MR. VERCRUYSSSE: That's correct, your Honor.

3 On Monday, March 21st the City of Aurora through
4 their traffic engineer, Eric Gault, had provided his
5 concurrence through e-mail concurring to the agreed
6 order and IDOT's Amended Petition.

7 JUDGE DUGGAN: Okay. Now, at that time he
8 didn't reference what constituted the Agreed Order.
9 Was that prior to March 16th, that e-mail?

10 MR. VERCRUYSSSE: The March 16th, 2011 date was
11 when Staff, myself, had provided a draft agreed order
12 to all parties. His response was to that agreed
13 order based upon his date of March 21st responding to
14 me.

15 JUDGE DUGGAN: Okay. And, in fact, you filed
16 that Agreed Order on the Commission e-Docket on
17 March 16, 2011; is that correct?

18 MR. VERCRUYSSSE: Correct, your Honor.

19 JUDGE DUGGAN: Okay. I believe that the
20 parties present have come to agreement on a
21 sufficient number of facts that I can issue an order.
22 Obviously, we can't have a fully agreed order as

1 Aurora's not here. And for various reasons I'll be
2 drafting an order and sending out a proposed order so
3 all parties will have a chance to have further input.
4 But as far as making the record to have the evidence
5 in the record from which to determine the facts and
6 make the findings and orderings necessary, we need to
7 have those facts on record.

8 So I believe the process that I've
9 suggested is that we're going to take
10 Mr. Vercruysse's -- the draft order that was posted
11 on the e-Docket on March 16th, 2011, and make that an
12 exhibit -- a physical exhibit that, I suggest, would
13 be the joint exhibit of IDOT, BNSF and Staff. And
14 that we then take stipulations to that -- to the
15 factual representations as stated in that agreement
16 as being true and correct and also to the findings
17 and conclusions -- the agreement to those findings
18 and conclusions.

19 Does anybody have an objection to that
20 procedure?

21 MR. JONES: No, your Honor.

22 MR. PRENDERGAST: No, I have not.

1 MR. VERCRUYSSSE: No objection, your Honor.

2 JUDGE DUGGAN: Okay. Then can each of you tell

3 me that you would like to present a true and correct

4 copy of the agreed order filed on e-Docket on

5 March 16, 2011, in this docket as your joint exhibit

6 in this cause?

7 Mr. Jones?

8 MR. JONES: On behalf of the Department, yes,

9 your Honor.

10 JUDGE DUGGAN: Mr. Prendergast?

11 MR. PRENDERGAST: On behalf of BNSF, yes.

12 JUDGE DUGGAN: Okay. Staff?

13 MR. VERCRUYSSSE: Yes, your Honor. On behalf of

14 Staff, yes.

15 JUDGE DUGGAN: Okay. Thank you.

16 Now, can each of you tell me that you

17 stipulate to the factual representations within that

18 draft agreed order, such that if evidence -- good and

19 competent evidence were presented in hearing under

20 oath that, in fact, the testimony would support those

21 as the facts?

22 Mr. Jones?

1 MR. JONES: On behalf of the Department, the
2 Department so stipulates.

3 JUDGE DUGGAN: Mr. Prendergast?

4 MR. PRENDERGAST: BNSF so stipulates.

5 JUDGE DUGGAN: Mr. Vercruysse?

6 MR. VERCRUYSSSE: Yes. Staff so stipulates
7 also.

8 JUDGE DUGGAN: Okay. And can each of you state
9 your stipulation that you agree that the findings
10 stated in the draft order are properly based upon
11 such factual basis as previously just stipulated to?
12 Mr. Jones?

13 MR. JONES: Yes, the Department agrees that the
14 Commission's findings and conclusions are accurate.

15 JUDGE DUGGAN: Okay. Mr. Prendergast?

16 MR. PRENDERGAST: BNSF agrees that they are
17 accurate as well.

18 JUDGE DUGGAN: Mr. Vercruysse?

19 MR. VERCRUYSSSE: Staff also agrees that the
20 findings and conclusions are accurate.

21 JUDGE DUGGAN: Okay. And with regard to the
22 ordering paragraphs stated in the draft order, do

1 each of you agree to the terms stated therein?

2 Mr. Jones?

3 MR. JONES: On behalf of the Department, yes,
4 we agree.

5 JUDGE DUGGAN: Mr. Prendergast?

6 MR. PRENDERGAST: On behalf of BNSF, we agree.

7 JUDGE DUGGAN: Mr. Vercruysse?

8 MR. VERCruysse: On behalf of Staff, we agree.

9 JUDGE DUGGAN: Okay. And with that let's also
10 mention that there are going to be some known
11 changes, some procedural, none that are not based
12 upon the evidence simply as previously stipulated to,
13 but that we will review quickly to make sure that
14 there's no misunderstanding here or that things are
15 not stated in an imprecise fashion to give a false
16 impressionism.

17 The first of those would be that under
18 the section of stipulated agreed facts after the
19 sentence that refers to the Route 25 intersection I
20 would insert a sentence stating -- very similar to
21 Finding 9 -- that IDOT has agreed to be responsible
22 for construction and maintenance costs associated

1 with the traffic signal modifications and
2 interconnect as outlined in the master agreement
3 between the City of Aurora and IDOT, period.

4 Now, can you all agree that that would
5 be a fair representation of the facts to be added to
6 the prefatory portion of the agreement?

7 Mr. Jones?

8 MR. JONES: Yes, your Honor. The Department
9 agrees and so stipulates.

10 JUDGE DUGGAN: Mr. Prendergast?

11 MR. PRENDERGAST: BNSF agrees and so
12 stipulates.

13 JUDGE DUGGAN: And Mr. Vercruysse?

14 MR. VERCRUYSSSE: Staff agrees also.

15 JUDGE DUGGAN: Okay. And then above the
16 Respondent's position section, four lines up, the
17 draft order refers to IDOT finalized traffic signal
18 plans for the interconnect with Commission approval.
19 I believe we've clarified that the intention with
20 that would be not the entire Commerce Commission, the
21 Commissioners, but Commission Staff approval. And
22 that I will revise the order accordingly.

1 Is that agreed, Mr. Jones?

2 MR. JONES: Yes, that's agreeable to the
3 Department.

4 JUDGE DUGGAN: Mr. Prendergast?

5 MR. PRENDERGAST: That's agreeable to BNSF.

6 JUDGE DUGGAN: And, Mr. Vercruysse?

7 MR. VERCRUYSSSE: Staff agrees, your Honor.

8 JUDGE DUGGAN: Okay. Then going on to the
9 finding paragraphs in Paragraph 6, which states that
10 IDOT should be authorized to interconnect the traffic
11 signals at the subject crossing, in addition to the
12 typed sentence on the draft agreed order, I will add
13 the following language: Consistent with a traffic
14 signal plan as finalized by IDOT with Commission
15 Staff approval.

16 Is that agreed, Mr. Jones?

17 MR. PRENDERGAST: Yes, that's agreeable to the
18 Department.

19 JUDGE DUGGAN: Mr. Prendergast?

20 MR. JONES: BNSF agrees to that.

21 JUDGE DUGGAN: And, Mr. Vercruysse?

22 MR. VERCRUYSSSE: Staff also agrees, your Honor.

1 JUDGE DUGGAN: Okay. Then on Paragraph 7 we
2 will change, "BSNF should install" to "BNSF should
3 install" and then insert, comma, "at the Illinois
4 Avenue Crossing," comma. Then proceed with the
5 present language ending with "32 seconds of
6 simultaneous preemption warning time." Then add the
7 following, comma, "and IDOT should be responsible for
8 all construction costs associated with the
9 installation of such light signals, comma, gates and
10 circuitry and BNSF should be responsible for future
11 maintenance and associated costs," period. Basically
12 taking the language of Paragraph 10 and adding that
13 to 7 for the purpose of removing any ambiguity about
14 which warning device improvements were referred to in
15 Paragraph 10 -- excuse me -- Finding 10.

16 Is that agreeable, Mr. Jones?

17 MR. JONES: Yes, the Department agrees.

18 JUDGE DUGGAN: Mr. Prendergast, is that
19 agreeable?

20 MR. PRENDERGAST: Yes, your Honor, BNSF agrees
21 as well.

22 JUDGE DUGGAN: And, Mr. Vercruysse?

1 MR. VERCRUYSSSE: Staff agrees also, your Honor.

2 JUDGE DUGGAN: Thank you.

3 And then on Paragraph 9, it would

4 insert -- back where it says, "IDOT should be

5 responsible regarding the traffic signal

6 modifications and interconnect," at that point we'll

7 insert, comma, "other than as provided in Finding 7."

8 Is that agreeable, Mr. Jones?

9 MR. JONES: Yes, it's agreeable with the

10 Department.

11 JUDGE DUGGAN: Is that agreeable,

12 Mr. Prendergast?

13 MR. PRENDERGAST: It's agreeable with BNSF,

14 your Honor.

15 JUDGE DUGGAN: Thank you.

16 And, Mr. Vercruysse?

17 MR. VERCRUYSSSE: Staff agrees, your Honor.

18 JUDGE DUGGAN: Okay. And then since that --

19 those last few changes were all to clarify Finding 10

20 by moving them to those -- or moving the essence of

21 it to Finding 7, I will delete Finding 10.

22 Is that agreeable with Mr. Jones?

1 MR. JONES: Yes, the Department agrees.

2 JUDGE DUGGAN: Mr. Prendergast?

3 MR. PRENDERGAST: BNSF agrees.

4 JUDGE DUGGAN: And, Mr. Vercruysse?

5 MR. VERCRUYSSSE: Staff agrees.

6 JUDGE DUGGAN: Okay. Then the third ordering

7 paragraph since there are now -- since we moved

8 Finding 10 there are now 15 findings rather than 16,

9 so I would remove "16" and insert "15" there. And I

10 would also add after -- at the end of the third

11 ordering paragraph, "including the allocation of

12 responsibilities for installation, comma, maintenance

13 and costs thereof, as stated in such findings,"

14 period.

15 Is that agreeable, Mr. Jones?

16 MR. JONES: Yes, that's agreeable to the

17 Department.

18 JUDGE DUGGAN: Is that agreeable,

19 Mr. Prendergast?

20 MR. PRENDERGAST: BNSF agrees, your Honor.

21 JUDGE DUGGAN: And that's agreeable with

22 Mr. Vercruysse?

